

**APPROVING RESOLUTION
HERKIMER SOLAR, LLC PROJECT**

A regular meeting of Herkimer County Industrial Development Agency (the "Agency") was convened in public session at the Herkimer County Chamber of Commerce Conference Room located at 420 E. German Street, in the Village and Town of Herkimer, Herkimer County, New York, on April 20, 2023 at 8:00 o'clock a.m., local time.

The meeting was called to order by the Chairman of the Agency and, upon roll being called, the following members of the Agency were:

PRESENT:

Vincent James Bono	Chairman
Cory Albrecht	Vice Chairman
John Scarano	Secretary
Alana Basloe	Director
Tim Day	Director
Ann Gaworecki	Director

ABSENT:

Michael Werenczak	Treasurer
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AGENCY STAFF PRESENT INCLUDED THE FOLLOWING:

John J. Piseck, Jr.	Chief Executive Officer
Victoria Adams	Operations Manager
Jennifer Young	Office Administration
Erin Spina	Marketing & Communications Specialist
A. Joseph Scott, III, Esq.	Special Agency Counsel

The following resolution was offered by John Scarano, seconded by Alana Basloe, to wit:

Resolution No. 042023-06

**RESOLUTION AUTHORIZING EXECUTION OF DOCUMENTS IN CONNECTION
WITH A LEASE/LEASEBACK TRANSACTION FOR A PROJECT FOR HERKIMER
SOLAR, LLC PROJECT**

WHEREAS, Herkimer County Industrial Development Agency (the "Agency") is authorized and empowered by the provisions of Chapter 1030 of the 1969 Laws of New York, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the "Enabling Act") and Chapter 410 of the 1970 Laws of New York, as amended, constituting Section 898 of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the "Act") to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial, research, and recreation facilities, among others, for the purpose of promoting, attracting and developing economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York, to improve their prosperity and standard of living, and to prevent unemployment and economic deterioration; and

WHEREAS, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to acquire, construct, reconstruct and install one or more “projects” (as defined in the Act) or to cause said projects to be acquired, constructed, reconstructed and installed, and to convey said projects or to lease said projects with the obligation to purchase; and

WHEREAS Herkimer Solar, LLC, a New York State limited liability company (the “Company”), submitted an application (the “Application”) to the Agency, a copy of which Application is on file at the office of the Agency, requesting that the Agency consider undertaking a project (the “Project”) for the benefit of the Company, said Project consisting of the following: (A) (1) the acquisition of an interest in approximately 23 acres of land (tax map number 104.4-1-64.1) located at 149 School Lane Road in the Town of Frankfort, Herkimer County, New York (the “Land”), (2) the construction on the Land of an approximately 3.154 MWAC solar energy generating facility, including panels, racking, inverters, electrical cables, battery storage, grid interconnection, site preparation, access roads and any other required improvements (all said improvements being collectively referred to as the “Facility”) and (3) the acquisition and installation therein and thereon of related fixtures, machinery, equipment and other personal property (the “Equipment”), all of the foregoing to constitute a solar energy generating facility to be owned and operated by the Company (the Land, the Facility and the Equipment being collectively referred to as the “Project Facility”); (B) the granting of certain “financial assistance” (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from certain sales and use taxes, real property taxes, real estate transfer taxes and mortgage recording taxes (collectively, the “Financial Assistance”); and (C) the lease (with an obligation to purchase) or sale of the Project Facility to the Company or such other person as may be designated by the Company and agreed upon by the Agency; and

WHEREAS, pursuant to the authorization contained in a resolution adopted by the members of the Agency on March 28, 2023 (the “Public Hearing Resolution”), the Chief Executive Officer of the Agency (A) caused notice of a public hearing of the Agency (the “Public Hearing”) pursuant to Section 859-a of the Act, to hear all persons interested in the Project and the financial assistance being contemplated by the Agency with respect to the Project, were mailed on March 29, 2023 to the chief executive officers of the county and of each town, village and school district in which the Project Facility is to be located, (B) caused notice of the Public Hearing to be posted on March 29, 2023 on a public bulletin board located at the Town of Frankfort Town Hall, located at 201 Third Ave, in the Town of Frankfort, Herkimer County, New York and on the Agency’s website, (C) caused notice of the Public Hearing to be published on March 31, 2023 in the Times Telegram, a newspaper of general circulation available to the residents of the Town of Frankfort, Herkimer County, New York, (D) conducted the Public Hearing on the 12th day of April, 2023 at 8:00 o’clock am., local time, at the Town of Frankfort Town Hall located at 201 Third Avenue, in the Town of Frankfort, Herkimer County, New York, (E) prepared a report of the Public Hearing (the “Public Hearing Report”) fairly summarizing the views presented at such Public Hearing and caused copies of said Public Hearing Report to be made available to the members of the Agency, and (F) caused a copy of the Public Hearing Resolution to be sent via certified mail, return receipt requested on March 29, 2023 to the chief executive officer of the County and of each city, town, village, and school district in which the Project Facility is to be located; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the “SEQR Act”) and the regulations (the “Regulations”) adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (collectively with the SEQR Act, “SEQRA”), by resolution adopted by the Town Board of the Town of Frankfort (the “Town Board”), on October 27, 2022 (the “SEQR Resolution”), which SEQR Resolution is hereby renewed and ratified by the Agency, the Town Board determined (A) to act as “lead agency” with respect to SEQRA with respect to the acquisition, construction and installation of the Project Facility, (B) that the acquisition, construction and installation of the Project Facility was determined to be a Type 1

action with regard to SEQRA, and (C) that the Project would not have “a significant adverse environmental impact” and, therefore, that an “Environmental Impact Statement” is not required to be prepared with respect to the acquisition, construction and installation of the Project Facility; and

WHEREAS, the Agency has given due consideration to the Application, and to representations by the Company that (A) the granting by the Agency of the Financial Assistance with respect to the Project will be an inducement to the Company to undertake the Project in Herkimer County, New York and (B) the completion of the Project will not result in the removal of a plant or facility of any proposed occupant of the Project Facility from one area of the State of New York to another area in the State of New York and will not result in the abandonment of one or more plants or facilities of any occupant of the Project Facility located in the State of New York; and

WHEREAS, the Agency desires to encourage the Company to preserve and advance the job opportunities, health, general prosperity and economic welfare of the people of Herkimer County, New York by undertaking the Project in Herkimer County, New York; and

WHEREAS, in order to consummate the Project and the granting of the Financial Assistance described in the notice of the Public Hearing, the Agency proposes to enter into the following documents (hereinafter collectively referred to as the “Agency Documents”): (A) a certain lease to agency (the “Lease to Agency” or the “Underlying Lease”) by and between the Company, as landlord, and the Agency, as tenant, pursuant to which the Company will lease to the Agency a portion of the Land and all improvements now or hereafter located on said portion of the Land (collectively, the “Leased Premises”); (B) a lease agreement (and a memorandum thereof) (the “Lease Agreement”) by and between the Agency and the Company, pursuant to which, among other things, the Company agrees to undertake the Project as agent of the Agency and the Company further agrees to lease the Project Facility from the Agency and, as rental thereunder, to pay the Agency’s administrative fee relating to the Project and to pay all expenses incurred by the Agency with respect to the Project; (C) a payment in lieu of tax agreement (the “Payment in Lieu of Tax Agreement”) by and between the Agency and the Company, pursuant to which the Company will agree to pay certain payments in lieu of taxes with respect to the Project Facility; (D) a uniform agency project agreement (the “Uniform Agency Project Agreement”) by and between the Agency and the Company regarding the granting of the financial assistance and the potential recapture of such assistance; (E) a certain recapture agreement (the “Section 875 GML Recapture Agreement”) by and between the Company and the Agency, required by the Act, regarding the recovery or recapture of certain sales and use taxes; (F) a sales tax exemption letter (the “Sales Tax Exemption Letter”) to ensure the granting of the sales tax exemption which forms a part of the Financial Assistance; (G) a New York State Department of Taxation and Finance form entitled “IDA Appointment of Project Operator or Agency for Sales Tax Purposes” (the form required to be filed pursuant to Section 874(9) of the Act) (the “Thirty-Day Sales Tax Report”) and any additional report to the Commissioner of the State Department of Taxation and Finance concerning the amount of sales tax exemption benefit for the Project (the “Additional Thirty-Day Project Report”); (H) if the Company intends to finance the Project with borrowed money, a mortgage and any other security documents and related documents (collectively, the “Mortgage”) from the Agency and the Company to the Company’s lender with respect to the Project (the “Lender”), which Mortgage will grant a lien on and security interest in the Project Facility to secure a loan from the Lender to the Company with respect to the Project (the “Loan”); (I) if the Company requests the Agency to appoint a contractor or contractors, as agent(s) of the Agency (each, a “Contractor”) (1) a certain agency indemnification agreement (the “Contractor Agency and Indemnification Agreement”) by and between the Agency and the Contractor, (2) a certain recapture agreement (the “Contractor Section 875 GML Recapture Agreement”) by and between the Agency and the Contractor, (3) a sales tax exemption letter (the “Contractor Sales Tax Exemption Letter”), and (4) a Thirty-Day Sales Tax Report (the “Contractor Thirty-Day Sales Tax Report”) and any additional report to the Commissioner of the State Department of Taxation and Finance concerning the amount of sales tax exemption benefit for the Project (the “Additional Thirty-Day Project Report”)

(collectively, the "Contractor Documents"); (J) if the Company intends to request the Agency to appoint (1) the Company, as agent of the Agency and (2) a Contractor, as agent(s) of the Agency prior to closing on the Project and the Lease Agreement, interim agency and indemnification agreements, interim Section 875 GML recapture agreements, interim sales tax exemption letters and interim thirty-day sales tax reports (collectively, the "Interim Documents") and (K) various certificates relating to the Project (collectively, the "Closing Documents");

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF HERKIMER COUNTY INDUSTRIAL DEVELOPMENT AGENCY AS FOLLOWS:

Section 1. All action taken by the Chief Executive Officer with respect to the Public Hearing with respect to the Project is hereby ratified and confirmed.

Section 2. The law firm of Hodgson Russ LLP is hereby appointed Special Agency Counsel with respect to all matters in connection with the Project. Special Agency Counsel is hereby authorized, at the expense of the Company, to work with the Company, counsel to the Company, counsel to the Agency and others to prepare, for submission to the Agency, all documents necessary to effect the transactions contemplated by this resolution. Special Agency Counsel has prepared and submitted an initial draft of the Agency Documents to staff of the Agency.

Section 3. The Agency hereby finds and determines that:

(A) By virtue of the Act, the Agency has been vested with all powers necessary and convenient to carry out and effectuate the purposes and provisions of the Act and to exercise all powers granted to it under the Act;

(B) The Project constitutes a "project," as such term is defined in the Act;

(C) The Project site is located entirely within the boundaries of Herkimer County, New York;

(D) It is estimated at the present time that the costs of the planning, development, acquisition, construction, reconstruction and installation of the Project Facility (collectively, the "Project Costs") will be approximately \$7,185,941.16;

(E) The completion of the Project will not result in the removal of a plant or facility of any proposed occupant of the Project Facility from one area of the State of New York to another area in the State of New York and will not result in the abandonment of one or more plants or facilities of any occupant of the Project Facility located in the State of New York;

(F) The Project Facility does not constitute a project where facilities or property that are primarily used in making retail sales of goods and/or services to customers who personally visit such facilities constitute more than one-third of the total cost of the Project, and accordingly the Project is not prohibited by the provisions of Section 862(2)(a) of the Act, and accordingly the Agency is authorized to provide financial assistance in respect of the Project pursuant to Section 862(2)(a) of the Act;

(G) The granting of the Financial Assistance by the Agency with respect to the Project will promote and maintain the job opportunities, general prosperity and economic welfare of the citizens of Herkimer County, New York and the State of New York and improve their standard of living, and thereby serve the public purposes of the Act;

(H) The Agency has reviewed the Public Hearing Report and has fully considered all comments contained therein;

(I) The Project should receive the Financial Assistance in the form of exemptions from sales tax and a real property tax abatement based on the description of expected public benefits to occur as a result of this Project as described on Exhibit A attached hereto and failure by the Company to meet the expected public benefits will result in a recapture event; and

(J) It is desirable and in the public interest for the Agency to enter into the Agency Documents.

Section 4. In consequence of the foregoing, the Agency hereby determines to: (A) lease the Project Facility to the Company pursuant to the Lease Agreement; (B) acquire, construct and install the Project Facility, or cause the Project Facility to be acquired, constructed, and installed; (C) enter into the Payment in Lieu of Tax Agreement; (D) enter into the Section 875 GML Recapture Agreement; (E) enter into the Uniform Agency Project Agreement; (F) enter into the Contractor Documents; (G) enter into the Interim Documents; (H) secure the Loan by entering into the Mortgage; (I) grant the Financial Assistance with respect to the Project; and (J) enter into the Interim Documents.

Section 5. The Agency is hereby authorized (A) to acquire a leasehold interest in the Leased Premises pursuant to the Underlying Lease, and (B) to do all things necessary or appropriate for the accomplishment thereof, and all acts heretofore taken by the Agency with respect to such acquisitions are hereby approved, ratified and confirmed.

Section 6. The Agency is hereby authorized to acquire, construct and install the Project Facility as described in the Lease Agreement and to do all things necessary or appropriate for the accomplishment thereof, and all acts heretofore taken by the Agency with respect to such acquisition, construction and installation are hereby ratified, confirmed and approved.

Section 7. The Chairman (or Vice Chairman) of the Agency, with the assistance of Special Agency Counsel, is authorized to negotiate and approve the form and substance of the Agency Documents.

Section 8. (A) The Chairman (or Vice Chairman) of the Agency is hereby authorized, on behalf of the Agency, to execute and deliver the Agency Documents, and, where appropriate, the Secretary of the Agency is hereby authorized to affix the seal of the Agency thereto and to attest the same, all in the forms thereof as the Chairman (or Vice Chairman) shall approve, the execution thereof by the Chairman (or Vice Chairman) to constitute conclusive evidence of such approval.

(B) The Chairman (or Vice Chairman) of the Agency is hereby further authorized, on behalf of the Agency, to designate any additional Authorized Representatives of the Agency (as defined in and pursuant to the Lease Agreement).

Section 9. The officers, employees and agents of the Agency are hereby authorized and directed for and in the name and on behalf of the Agency to do all acts and things required or provided for by the provisions of the Agency Documents, and to execute and deliver all such additional certificates, instruments and documents, to pay all such fees, charges and expenses and to do all such further acts and things as may be necessary or, in the opinion of the officer, employee or agent acting, desirable and proper to effect the purposes of the foregoing resolution and to cause compliance by the Agency with all of the terms, covenants and provisions of the Agency Documents binding upon the Agency.

Section 10. This resolution shall take effect immediately.

The question of the adoption of the foregoing resolution was duly put to a vote on roll call, which resulted as follows:

Vincent James Bono	VOTING	Yes
Cory Albrecht	VOTING	Yes
John Scarano	VOTING	Yes
Michael Werenczak	VOTING	Absent
Alana Basloe	VOTING	Yes
Tim Day	VOTING	Yes
Ann Gaworecki	VOTING	Yes

The foregoing resolution was thereupon declared duly adopted.

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STATE OF NEW YORK)
) SS.:
COUNTY OF HERKIMER)

I, the undersigned Secretary of Herkimer County Industrial Development Agency (the "Agency"), DO HEREBY CERTIFY that I have compared the foregoing annexed extract of the minutes of the meeting of the members of the Agency, including the resolution contained therein, held on April 20, 2023 with the original thereof on file in my office, and that the same is a true and correct copy of said original and of such resolution contained therein and of the whole of said original so far as the same relates to the subject matters therein referred to.

I FURTHER CERTIFY that (A) all members of the Agency had due notice of said meeting; (B) said meeting was in all respects duly held; (C) pursuant to Article 7 of the Public Officers Law (the "Open Meetings Law"), said meeting was open to the general public, and due notice of the time and place of said meeting was duly given in accordance with such Open Meetings Law; and (D) there was a quorum of the members of the Agency present throughout said meeting.

I FURTHER CERTIFY that, as of the date hereof, the attached resolution is in full force and effect and has not been amended, repealed or rescinded.

W IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Agency this day of April, 2023.

Victoria Adams
Assistant Secretary

(SEAL)

EXHIBIT A

DESCRIPTION OF THE EXPECTED PUBLIC BENEFITS

In the discussions had between the Project Beneficiary and the Agency with respect to the Project Beneficiary's request for Financial Assistance from the Agency with respect to the Project, the Project Beneficiary has represented to the Agency that the Project is expected to provide the following benefits to the Agency and/or to the residents of Herkimer County, New York (the "Public Benefits"):

Description of Benefit		Applicable to Project (indicate Yes or NO)		Expected Benefit
1.	Existing jobs on project site	☐ Yes	☒ No	N/A
2.	Creation of new permanent jobs	☐ Yes	☒ No	N/A
3.	Estimated value of tax exemptions	☒ Yes	☐ No	The estimated amount of the tax exemptions are described as follows: \$533,991.23 in sales tax exemptions; and \$1,017,331.94 in the form of real property tax exemption.
4.	Private sector investment	☒ Yes	☐ No	\$7,185,941.16 in private investment.
5.	Likelihood of project being accomplished in a timely fashion	☒ Yes	☐ No	High likelihood of project being completed in a timely manner.
6.	Extent of new revenue provided to local taxing jurisdictions	☒ Yes	☐ No	The Project involves further development in the Town of Frankfort, so there will be new tax revenue generated by the Company and made available to the local taxing jurisdictions.
7.	Any additional public benefits	☒ Yes	☐ No	This Project will create approximately 25 construction jobs and promotes the State's energy goals as expressed in the State Energy Plan and the Climate Leadership and Community Protection Act.
8.	Local labor construction jobs	☒ Yes	☐ No	The Company has estimated that up to 80% of the construction jobs will be sourced locally.
9.	Regional wealth creation (% of sales/customers outside of the County)	☒ Yes	☐ No	\$1,353,143.00 of projects costs will be towards labor and material sourced from the Mohawk Valley Regional Economic Development Council Region.

10.	Located in a highly distressed census tract	☐ Yes	☒ No	The Project is not located in a highly distressed census tract, as defined in the IDA Statute.
11.	Alignment with local planning and development efforts	☒ Yes	☐ No	The Project is consistent with local planning and development efforts.
12.	Promotes walkable community areas	☐ Yes	☒ No	The Project site is not located in an urban setting with sidewalks.
13.	Elimination or reduction of blight	☐ Yes	☒ No	N/A
14.	Proximity/support of regional tourism attractions/facilities	☐ Yes	☒ No	N/A
15.	Local or County official support	☒ Yes	☐ No	The Project does have Local and County official Support.
16.	Building or site has historic designation	☐ Yes	☒ No	The site does not have historical significance.
17.	Provides brownfield remediation	☐ Yes	☒ No	No brownfields present.